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The Universal Declaration of Human Rights and Latin America

LILIANA OBREGÓN*

Though we are reflecting on the 60th anniversary of the Universal Declaration of Human Rights, it is appropriate to also remember that in April of last year we also celebrated the 60th anniversary of the American Declaration of the Rights and Duties of Man.¹ And going further back, another relevant anniversary this past year was that of the bicentennial of the French Napoleonic Invasion of 1808 in Mexico, which triggered many of the independence movements in Latin America, whose bicentennials we will be remembering for the next two decades. It has also been one hundred and fifty years since the term *Latin America* was coined, when, in the second half of the nineteenth century, there was a distancing from the United States' interventions in the region and its appropriation of the continent's name. With this distancing came a closer identification with the civilizational origins of Rome and the cultural influence of France.

Now the purpose of remembering these anniversaries is not just a commemorative one, but also one that shows how international law and international human rights law are rooted in the particularities of time and place. However universally we may want to think about

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1. American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, Int'l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948), available at <http://www.corteidh.or.cr/docs/libros/Basingl01.pdf>.

rights, they may often have unexpected local origins and specific unintended consequences.

Latin American experts in international law like to boast of several regional legal traditions that have contributed to the development of international law. One of these is the promotion of internationally recognized human rights. Human rights, along with the regionalist discourse itself, as well as the doctrine of non-intervention (to mention a few of those traditions) have resulted in concrete legal consequences.

The notion of individual rights, a late 19th century and early 20th century preoccupation of Latin American lawyers and diplomats, concerned the fact that the United States (and some European nations) often intervened in the region using as a justification the protection of the rights of their citizens residing abroad. Thus, a claim for an international recognition of equality of jurisdiction over nationals and aliens was part of the regional discourse for many decades. When the renowned Chilean jurist Alejandro Álvarez (1868–1960) began to theorize and promote the recognition of a “Latin American International Law” at the beginning of the 20th century, he also conceptualized the need for internationally recognized individual rights. On the one hand, Álvarez believed that international law should reflect the particularities of a place. “Law is a social and psychological phenomenon. . . . The states of the New World create . . . a soul, a personality of their own and, from that fact, can give birth to specific institutions and principles of international law.” Thus, he thought, the region should produce universal principles from its particular experiences.

On the other hand, when it came to institutionalizing this regionalist perspective, Álvarez understood that it was necessary to include, rather than antagonize, the United States in order to avoid furthering the cleavage between the region’s hegemon and the Latin American states. As a result, he co-founded the American Institute of International Law (AIIL) with one of the most prestigious U.S. internationalists of the time, James Brown Scott.

Using his position in the AIIL, Álvarez began promoting a text in 1916 on the fundamentals of a new international law—the “Declaration of the Rights and Duties of Nations”—in which he included a section on the “International Rights of the Individual,” which spelled out the individual liberties that should be recognized as inherent to any person, living in any state. These rights included the “right to

life, liberty, and property, without distinction of nationality, sex, race, language, or religion.”² In fact, Álvarez claimed that he was the first to promote the rights of man internationally.

Álvarez’s declaration took hold and continued to be developed and discussed throughout the first half of the century. In 1945, Álvarez presented a more solid “Draft Declaration on International Rights and Duties of the Individual” to the fourth Inter-American Lawyers conference in Santiago, Chile. By 1948, Latin American leaders had adopted the American Declaration of the Rights of Man, anticipating the Universal Declaration of Human Rights by several months. In fact, the delegates from Latin America were the largest single regional bloc at the United Nations conference in San Francisco. The delegates made sure that a final draft of the American Declaration was a major source for the drafters of the Universal Declaration and as a result, many of its provisions made their way into the final U.N. document.

So, perhaps with this history in mind, we could say that in addition to having humanitarian interests, these Latin American leaders, who represented the ruling elite in the region, urged an international declaration of rights in order to secure a “minimum standard of civilized justice” for aliens living abroad. As an international guarantee, this declaration would serve two purposes: Latin American nationals would enjoy equal standards of protection as the foreigners who came to live in their own countries, and the United States or European nations would have no excuse for interventions in the region.

If understood as Álvarez proposed, a regionalist perspective, which resulted from a cleavage between the interventionist intentions and practices of the more powerful nations and the claim to sovereignty of the peripheral nations of Latin America, gradually evolved into universally applicable principles.

Despite these post-World War II acknowledgements of a new bill of rights, the Universal and American Declarations of Human Rights became secondary in the region during the next two decades as Latin America became a privileged stage on which the Cold War played out. Authoritarian regimes flourished and the possibility of international human rights protection in Latin America shifted into the

2. ALEJANDRO ÁLVAREZ, *LA RECONSTRUCCION DEL DERECHO DE GENTES: EL NUEVO ORDEN Y LA RENOVACIÓN SOCIAL* 91 (1944).

discourse of anti-Communism. Therefore, instead of being a reason to avoid intervention, as envisioned in the pre-1950s support for an international bill of rights, Latin American governments feared that human rights would come back to haunt them and become an excuse for interventions, first from the Communist bloc and then from the United States in the late 1970s when a new human rights policy began to emerge. However, this perspective shifted in the mid 1980s and through the 1990s with the prevalence and consolidation of democratic transitions in the region.

Once again, most Latin American governments began to support a national human rights agenda. We have seen how many governmental institutions, educational literature, and human rights professionals have flourished in the region. And like Chief Justice Chaskalson's example of South Africa's Constitutional Court taking the country closer to the ideals of the Universal Declaration,³ in the same way, many Latin American constitutional and supreme courts have used the language of the Universal Declaration and the American Declaration, even citing them directly, to uphold a broad range of rights that were foreseen in these foundational declarations. Some would point out in this happy story that even when such claims are not satisfied in national courts, the Inter-American System of Human Rights has done much to promote the aspirations of the Universal and American Declarations. The system has gained much legitimacy in the hemisphere, becoming part of the contemporary legal consciousness of the region and serving as a particular institution that is successful and effective in denouncing patterns of violations and requiring violating States to acknowledge their responsibility and repair the damages.

On the other hand, the difficult part of this seemingly happy ending is that despite institutional growth, the sophistication of the lawyers, and the many individual successes in ending or repairing certain violations, the acts of horrendous violence, outrageous discrimination, and incredible injustice continue to occur in the region. The disparities in income and unequal access to education, health care, and housing in Latin America continue to be among the worst in the world.

To understand how these cleavages work out in practice, let us take a look at the particular case of Colombia, the country that hosted

3. Arthur Chaskalson, *Dignity and Justice for All*, 24 MD. J. INT'L L. 24 (2009).

the 1948 conference that signed into existence the American Declaration on Human Rights. Just as the delegates discussed the details of the American Declaration, Jorge Eliecer Gaitán, a prestigious political leader with broad popular appeal, was assassinated, and the country descended into a civil war that lasted for decades. When the country returned to some sense of institutional stability, it found itself closely aligned with the United States in the mist of the Cold War, a new international scenario that relegated the discussion of human rights as inferior to geo-political interests. In addition, communist guerrillas sprung up, as well as the region's infamous international drug traffickers. In this context, it is not surprising that the gap between human rights standards promoted regionally and Latin America's specific national security interests played a significant role in this Andean country. Indeed, despite Colombia's consistently dismal human rights record, U.S. policy on human rights becomes harder or softer depending on the record of the Colombian government to control drug trafficking and Communist guerrilla warfare, both of which are national security interests of the United States. This position has become even more evident after the events of September 11, 2001. Conversely, the Colombian government's support for President Bush's international policy against terrorism, including the U.S.-led war on Iraq, as a way of legitimizing its own national anti-terrorism war, is a deviation from the Colombian tradition of support for the Latin American principle of non-intervention.

The Colombian government continues to hold a veil over the continuing internal conflict by saying that no such conflict exists, placing violence in the context of drugs and terrorism. This policy comports with U.S. interests and has the support of the majority of war-weary Colombians. But most interesting is the way in which the armed actors of this conflict, both military and non-military, have effectively appropriated the language of human rights and humanitarian law for their own purposes.

In conclusion, the 60th anniversary of the Universal Declaration of Human Rights should not only celebrate the far-reaching success of the standards upheld in this important document, but should also reflect upon the complexities and unexpected consequences that the powerful language of human rights has had in different times and places.